IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE N.V. RAMANA**

**WRIT PETITION NO : 24668 of 2004**

Between:

Smt.H.Subhadra, w/o.Rama Rao,

Aged 52 yrs., R/o.9-3-71,

Station Road, Khammam,

Khammam District.

**..... PETITIONER**

AND

1 The Sub-Registrar,
Banjara Hills, Hyderabad.
2 The Commissioner & Inspector General of Registration and Stamps,
R.T.C. Cross Raods, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in keeping the document No.374/2004 registered before the 1st respondent as illegal, arbitrary and contrary to provisions of Registration Act, 1908 and consequently direct the respondents to return the registered document No.374/2004 executed in favour of the petitioner.

**Counsel for the Petitioner: MR.D.RAMESH**

**Counsel for the Respondents: GP FOR Registration & Stamps.**

**The Court made the following :**

**THE HONOURABLE SRI JUSTICE N.V.RAMANA**

**WRIT PETITION NO.24668 OF 2004**

**ORDER:**

Heard the learned counsel for the petitioner and the learned Government Pleader for Registration and Stamps and with their consent, the writ petition is disposed of at the stage of admission.

The petitioner states that he purchased house bearing No.8-2-293/82/NL/15A & 15B in Sy.Nos.125 and 126 of Yousufguda village admeasuring an extent of 600 sq.yards from A.V.G.Krishna Murthy and D.Subramanyam, who originally were allotted the said plots by M/s.Vijaya Co-operative House Building Society Limited (hereinafter referred to as 'the Society') in whose favour the Government had alienated the land by registered Deed dated 13.4.1994. The said individuals, the petitioner states, having received the sale consideration, executed Agreement of Sale-cum-General Power of Attorney with possession on 19.11.2004 before the Sub-Registrar, Banjara Hills, and that on paying the required stamp duty and registration fee, the said document was also admitted. It is the grievance of the petitioner that even though the first respondent admitted the document and registered the same, but failed to return the same, and without giving any endorsement in writing orally informed her that he had received telephonic orders from his higher-ups not to release the document. It is this action of the first

respondent, which the petitioner seeks to challenge in this writ petition.

The learned counsel for the petitioner submits that as per Rule 104 of A.P.Rules, framed under the Registration Act,1908, the document registered shall be returned on the date of its admission itself, and it cannot be withheld or detained.

The learned Government Pleader for Stamps and Registration submitted that as the allotment made to the original allottee was cancelled, the original allottee issued legal notice not to register the document, and in those circumstances, the higher-ups issued instructions to the first respondent not to release the document, and more so when there were civil disputes between the original allottee and the society pending.

Originally the Society allotted the plots in question in favour of Sri K.Gopal Reddy, and when the allotment was cancelled, he filed a writ petition in W.P.No.5995 of 2004, and against the order dated 19.2.2004 passed therein holding that the unilateral cancellation of sale deeds is void, the Society filed writ appeal in W.A.No.972 of 2004, and the Division Bench of this Court by order dated 11.10.2004, while allowing the writ appeal, observed as follows:

> It is unnecessary to reiterate that the registering authority is not under any statutory obligation to make an enquiry whenever a cancellation deed is presented for registration for the purpose of satisfying himself as to whether for good reasons the document has been presented or not. Law does not impose any such obligation on the registering authority nor there is any provision enabling him to make any such enquiry. The dispute is essentially between the appellant and the writ petition, which is required to be resolved in a properly constituted common law proceeding.

Pursuant to the above, it appears the original allottee sent a legal notice dated 18.11.2004 to the first respondent not to register the plot in favour of third parties, and when the document was presented on 19.11.2004, the first respondent considering that there were legal issues involved in transfer of the plots, kept the document for detailed examination, and while so, he appears to have telephonic orders from higher-ups not to release the documents. It is under these circumstances, the first respondent, even though admitted the document and registered it, failed to return it to the petitioner.

In W.P.No.1953 of 2002, the petitioner therein questioned the action of the Joint Collector in issuing Circular to all the Mandal Revenue Officer not to issue any

'No Objection Certificate" for the purpose of registration and also the Sub-Registrars not to entertain any documents for registration of lands in respect of the lands within the district without prior approval of the District Collector. By order dated 11.12.2003, this Court while allowing the said writ petition, and directing that any document presented for registration shall be processed and dealt with as per the provisions of the Indian Stamps Act and the Registration Act, inter alia observed and held thus:

> In the impugned circular, the Joint Collector took exception to the issuance of no objection certificate by the Mandal Revenue Officers and he ultimately directed the Mandal Revenue Officers not to issue any no objection certificate for registration purpose or otherwise in respect of lands in the district without prior approval of the District Collector. A direction was also issued to all the Sub-Registrars not to entertain any documents for registration of lands in the district without prior approval or in the absence of no objection from the District Collector. In a way the circular brings all the transactions in respect of lands in the district to halt. For such an exercise, the respondents must have specific power under any relevant statute. The circular has no reference to any provision of law under which it is issued.
>
> As long as any person holds title to the property, the respondents do not have any power of jurisdiction to prevent the same from being transferred. It is not as if there is no provision of law to protect the properties of the Government. in case, any individual is found to be in possession of Government land, the Andhra Pradesh Land Encroachment Act enables the revenue authorities to evict the persons in unauthorized occupation. Similarly, proceedings can be initiated under the provisions of the Andhra Pradesh Land Grabbing (Prohibition) Act, where a person is found to be in possession of Government land without legal entitlement. The Joint Collector has chosen the course action which is not permissible in law.
>
> The Registration Act does contain a provision enabling the Government to prohibit transfer in respect of any lands. Such prohibition, however, is to be imposed by issuing a notification under Section 22 (A) of the Registration Act,1908. The Government has not chosen to issue a notification under that provision in respect of lands held by the petitioner. Viewed from any angle, this Court does not find any basis for the impugned circular.

A Division Bench of this Court, by its judgment dated 10.9.2001, passed in W.A.No.1390 of 2001 also took an exception to such a practice being adopted by the revenue officials in the matter of registration.

The law as it stands today is that unless there is a notification issued by the Government under Section 22(a) of the Registration Act, 1908 prohibiting transfer of lands mentioned therein, neither registration of the document can be refused nor can it be detained after its admission and registration. It is admitted by the learned Government Pleader appearing on behalf of the respondents that no notification under Section 22(a) of the Registration Act was issued by the Government prohibiting alienation of the lands in question. When such is the case of the respondents, it was not proper on the part of the first respondent to detain the document after admitting and registering it, and more so on the instructions of his higher-ups, who even could not have issued such instructions having regard to the fact that in W.A.No.972 of 2004, the Division Bench of this Court by its judgment dated 11.10.2004, had held that the dispute was purely between the original allottee

and the society, which could be resolved in a properly constituted common law proceeding.

In the above view of the matter, the action of the first respondent in detaining the document No.374 of 2004, executed by A.V.G.Krishna Murthy and D.Subrahmanyam in favour of the petitioner, without releasing it after admitting and registering the same, cannot be sustained, and it is accordingly declared to be illegal and arbitrary. The first respondent is directed to release the document to the petitioner.

The writ petition is accordingly allowed. No costs.

31.12.2004.

Note:

Issue C.C. today

(BO)

mdaa/svv/ksr

Copy to:

1 The Sub-Registrar,
Banjara Hills, Hyderabad.
2 The Commissioner & Inspector General of Registration and Stamps,
R.T.C. Cross Raods, Hyderabad.

3. Two C.Cs to Government Pleader for Registration and Stamps, High Court of A.P., Hyderabad (OUT).

4. Two C.D.copies.